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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,532	06/06/2001	Christopher G. Dixon	PA-5253-RFB	6953
9896	7590	01/15/2004	EXAMINER	
COOK GROUP PATENT OFFICE			THANH, LOAN H	
P.O. BOX 2269			ART UNIT	
BLOOMINGTON, IN 47402			PAPER NUMBER	
			3763	8
DATE MAILED: 01/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/875,532

Applicant(s)

DIXON ET AL.

Examiner

LoAn H. Thanh

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,12,13 and 18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1-5,8-11 and 14-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of species III in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 6-7, 12-13, 18 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

Claim 1 is generic.

See paper no. 6 regarding allowance of a generic claim. The Examiner may consider the claims at time of issue.

An action on the merits now follows.

### ***Specification***

The specification has been checked, however it has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-5,8-11 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is vague and indefinite because it is unclear whether the seal member is the same as the viscoselective high pressure seal or whether it is in addition to the viscoselective high pressure seal. Further if it is further in addition to it is unclear what element it is which would further define the viscoselective high pressure seal.

Claims 3-5,8-11 are vague and indefinite because it is unclear whether applicant is intending to positively recite the elements of the plunger. It appears that they have only been functionally recited. Applicant should amend the language to positively recite the elements of the plunger or make clear that the plunger is not intended to be claimed. Appropriate correction is required.

Claim 17 is vague and indefinite because it is unclear what the aperture is effectively inhibiting. See last 2 lines of the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-3,5 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Sams (U.S. Patent No. 4,865,591).

Sams discloses a syringe comprising a chamber 2, a plunger 5,25 movably axially with respect to the chamber, a connector 20 or distal portion element of the syringe and a seal member 4 which is interpreted in the broadest sense as an o-ring.

Claims 1-3,5,8,10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Box et al. (U.S. Patent No. 4,832,692).

Box et al. disclose a syringe comprising a chamber, a plunger 60 movably axially with respect to the chamber, a connector 15 and a seal member 56 in circumferential o-ring seats 55.

#### ***Allowable Subject Matter***

Claims 4, 9, 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 17 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 19-20 are allowable since the prior art of record fails to teach or render obvious a syringe in combination with all the elements and further comprising at least one aperture which extends longitudinal within the plunger tip portion from distally of the seal member to proximally passing under the seal member wherein the aperture is

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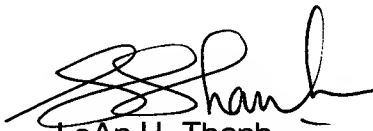
sufficiently small to inhibit passage of viscous material however also for defining an air escape vent.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (703) 305-0038. The examiner can normally be reached on Mon-Fri (alternate Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (703) 308-3552. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



LoAn H. Thanh  
Primary Examiner  
Art Unit 3763

LT